STATE OF MICHIGAN

COURT OF APPEALS

JARRELL HART and KONRAD DESHAWN MONTGOMERY, Plaintiffs-Appellants, v OFFICER DANAK, OFFICER BALL, OFFICER SHAHEEN, OFFICER FARNHAM, OFFICER BARTOK, OFFICER YAMIN, and OFFICER DAVID ALVIS, Defendants-Appellees.	UNPUBLISHED April 8, 2010 No. 280975 Wayne Circuit Court LC No. 06-615921-CZ

Before: Jansen, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion for summary disposition. We affirm.

After Christmas shopping at a clothing store in Dearborn, plaintiffs were in a parking lot behind the retail store. Police received a 911 call from a shopper indicating that four men in the parking lot were breaking into cars in the parking lot. The caller indicated that two of the men were wearing mustard colored jackets, one was wearing a green hooded sweatshirt, and the fourth was in a black jacket. The two taller men were wearing the mustard jackets. The caller described the two vehicles that the men were standing near as a "300 M" and a Neon. It was further reported that the caller's wife saw the men break into one vehicle in the parking lot, and she believed that the men were taking items from a car. The caller provided his name and telephone number and agreed to wait nearby to speak to police.

A police officer pulled into the parking lot and saw a group of men scatter and dodge between vehicles in a manner that indicated they were trying to evade the police. This officer found plaintiffs slouched down in a vehicle and reported that the men engaged in "furtive" gestures. Specifically, plaintiff Montgomery was observed with his hand at his waistband, and the men would not place their hands in the air. The clothing of the men matched the description

provided by the 911 caller. Plaintiffs admitted that they were attempting to hide from view.[1] Additional officers were called in because plaintiffs refused to exit the vehicle, and the police officers forcibly removed them. Two weapons were found, one on the person of plaintiff Montgomery and one in the vehicle.[2] Although charges were brought by the prosecutor's office, the circuit court dismissed them.

Plaintiffs filed this lawsuit alleging false arrest, false imprisonment, assault and battery, malicious prosecution, and racial intimidation. Following defendants' motion for summary disposition, the trial court held that there was a valid basis for the arrest and dismissed plaintiffs' complaint in its entirety. Specifically, the transcript provides that the trial court ruled:

> … This is not a probable cause to arrest. This is in classic terms a Terry Stop. The police … ha[d] a reasonable suspicion that criminal activity was afoot. … They had a right to take action with respect to the knowledge that they had.
>
> ***
>
> Therefore, the officers when they arrived at the parking lot, and confronted the two suspects in the one car, were lawfully at what the Court and Terry called the looking posts. They, therefore, had a right to seek cooperation from the Defendants, and examine the documents that they did examine. But during the course of the examination, other things happened. And that lead to what the officers then were able to determine was opposing and resisting.
>
> And, therefore, I find that there was no false arrests, there was no false imprisonment. There was no malicious prosecution. There was no assault and battery from which a police officer is immune in the – a police officer is immune from such a charge in the lawful performance of his or her duty. And there was no racial profiling, or discrimination.
>
> Even taking on the evidence in the light most favorable to the non-moving party, I find that the motion by the City for Summary Disposition on behalf of all the officers should be granted, and the case is dismissed.

Plaintiffs allege that the trial court erred in concluding that police officers had a valid reasonable suspicion to conduct a *Terry*[3] stop, that there was probable cause to arrest plaintiffs,

---

[1] Plaintiff Konrad Deshawn Montgomery testified regarding prior police contacts. He testified that the "law" gave him the right to determine if he should follow police orders. Therefore, he refused to get out of the car when ordered by police and dared police officers to bust out the windows of his car.

[2] Both plaintiffs refused to testify regarding the weapons found during the arrest, invoking their Fifth Amendment Rights.

[3] *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968).

and that the initial seizure was legal.[4] We disagree. Summary disposition decisions are reviewed de novo on appeal. *Joliet v Pitoniak*, 475 Mich 30, 35; 715 NW2d 60 (2006). The moving party has the initial burden to support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the nonmoving party to demonstrate a genuine issue of disputed fact exists for trial. *Id*. The nonmoving party may not rely on mere allegations or denials in the pleadings. *Id*. Summary disposition is appropriate when there is no genuine issue of material fact, and the moving party demonstrates entitlement as a matter of law. *Brown v Brown*, 478 Mich 545, 552; 739 NW2d 313 (2007).

In order to prevail on the claim of false arrest,[5] a plaintiff must establish that the defendants participated in an illegal and unjustified arrest, and that the defendants lacked probable cause to arrest. *Walsh v Taylor*, 263 Mich App 618, 626; 689 NW2d 506 (2004). To establish a claim of false arrest, the guilt or innocence of the person arrested is irrelevant. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 18; 672 NW2d 351 (2003). Actual innocence is not an element of the tort of false arrest. *Brewer v Perrin*, 132 Mich App 520, 527; 349 NW2d 198 (1984).

The claim of false imprisonment involves an "unlawful restraint on a person's liberty or freedom of movement." *Walsh*, 263 Mich App at 627, quoting *Peterson*, 259 Mich App at 17. The elements of false imprisonment are: (1) an act committed with the intent to confine another; (2) the outcome of the act, directly or indirectly, is confinement; and (3) the person confined is aware of his confinement. *Moore v Detroit*, 252 Mich App 384, 387; 652 NW2d 688 (2002). The substance of a false imprisonment claim is that the imprisonment is false because it occurs without right or authority to do so. *Id*. at 388. To prevail on a claim of false arrest or false imprisonment, a plaintiff must establish that it was illegal by demonstrating that it was not based on probable cause. *Peterson*, 259 Mich App at 18. If an arrest is legal, there cannot be a false arrest or false imprisonment. *Id*. Although plaintiff asserts that the issues involve disputed questions of fact that must be resolved by the jury, the existence of probable cause presents a question of law subject to de novo review on appeal. *Matthews v Blue Cross & Blue Shield of Michigan*, 456 Mich 365, 377; 572 NW2d 603 (1998).

Probable cause has been characterized as "any facts which would induce a fair-minded person of average intelligence and judgment to believe that the suspected person has committed a felony." *People v Coward*, 111 Mich App 55, 60; 315 NW2d 144 (1981). Probable cause that a person participated in the commission of a crime is established by a reasonable ground of

---

[4] Defendants' motion for summary disposition alleged that plaintiffs could not prove the elements of the claims set forth in the complaint. Plaintiffs' brief on appeal does not address the individual elements of the claims, but rather addresses the ruling rendered by the trial court.

[5] Even if the trial court reaches the wrong decision as a matter of law, this Court does not reverse if the correct result is reached, albeit for the wrong reason. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 508-509; 741 NW2d 539 (2007). Consequently, we need not determine if the trial court correctly identified the nature of the type of stop involved or any pretext if plaintiffs cannot sustain the elements of their claims.

suspicion, "supported by circumstances sufficiently strong in themselves to warrant a cautious person in the belief that the accused is guilty of the offense charged." *Peterson*, 259 Mich App at 19, citing *People v Coutu (On Remand)*, 235 Mich App 695, 708; 599 NW2d 556 (1999). "Probable cause is not capable of being precisely defined; rather, it is a commonsense concept dealing with practical considerations of everyday life that must be viewed from the perspective of reasonable and prudent persons, not legal technicians." *Peterson*, 259 Mich App at 19, citing *Ornelas v United States*, 517 US 690, 695-696; 116 S Ct 1657; 134 L Ed 2d 911 (1996).

In the present case, defendants were called to the scene in response to a police broadcast reporting criminal activity in progress because of a citizen's emergency call. By statute, an arresting officer may proceed to act without a warrant when he has received "positive information broadcast from a recognized police or other governmental radio station, or teletype, that affords the peace offer reasonable cause to believe a misdemeanor … or a felony has been committed and reasonable cause to believe the person committed it." MCL 764.15(f). The facts offered in support of the belief that probable cause exists must be present at the time of arrest. *Coward*, 111 Mich App at 60. An authorized police bulletin reporting that a felony has been committed, when coupled with other facts and circumstances, provides probable cause for an arrest without a warrant. *Id*. at 61. "A police officer who has received by radio the details of the commission of a felony, including a description of the perpetrators, has probable cause to arrest persons matching that description who are traveling on a possible escape route from the scene of the crime shortly after its commission." *People v Knight*, 41 Mich App 293, 294; 199 NW2d 861 (1972). Therefore, when police respond to a radio bulletin advising of a felony in progress, the officer's observation of the alleged felon, the similarity of the alleged felon to the description transmitted over the radio broadcast, and overt action, such as flight or furtive gestures, provides probable cause to arrest without a warrant. See *Coward*, 111 Mich App at 61.[6]

In the present case, the police bulletin coupled with the other facts and circumstances provided probable cause to arrest plaintiffs. Specifically, a shopper called for emergency to report males in a parking lot breaking into cars. The shopper identified the clothing of the four men purportedly involved, provided his name and telephone number, and agreed to wait for police. The first officer to arrive on the scene found a group of men scatter in the parking lot in an attempt to evade her. Plaintiffs were found in a small car wearing the clothing identified by the caller as those worn by the perpetrators of a felony in progress. The officer observed plaintiff Montgomery engage in furtive gestures near his waistband. Consequently, the first officer called for assistance and drew her weapon. The men refused the officer's request that they exit the vehicle and place their hands in the air. Plaintiffs continued to refuse to exit the vehicle, and consequently, they were stunned by a taser gun and were physically removed from the vehicle. Two weapons were found inside the vehicle. Therefore, the report of a felony in progress as a

---

[6] A stop of a driver is proper when there is a general police broadcast of a possible drunk or reckless driver when the driver and the vehicle match the description given. *United States v Erwin*, 155 F3d 818, 822 (CA 6, 1999). Even if the driver shows no signs of intoxication after the stop, the police may ask for permission to search the vehicle even in the absence of a reasonable and articulable suspicion that criminal activity was afoot. *Id*. at 822-823 citing *Florida v Royer*, 460 US 491, 497; 75 L Ed 2d 229; 103 S Ct 1319 (1983).

radio broadcast, the officer's observation of plaintiffs taking evasive action to avoid contact, the observation of plaintiffs in a nearby vehicle wearing clothing that matched the description of the perpetrators, and the overt furtive gestures at the waistband provided probable cause to arrest without a warrant. *Coward*, 111 Mich App at 61; *Knight*, 41 Mich App at 294. Consequently, the claims of false arrest and false imprisonment fail as a matter of law where there was probable cause to arrest plaintiffs based on the police bulletin coupled with the observations and occurrences that transpired on the scene following the arrival of the police.[7]

With respect to plaintiffs' malicious prosecution and racial intimidation claims, plaintiffs failed to address the issue of whether the trial court properly dismissed these claims in any manner. Accordingly, we conclude that plaintiffs abandoned the issue. "Insufficiently briefed issues are deemed abandoned on appeal." *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 471; 628 NW2d 577 (2001).

Lastly, plaintiffs argue that in granting defendants' motion for summary disposition, the trial court erroneously ruled, as a matter of law, that plaintiffs' assault and battery claim was barred on the basis of its conclusion that defendants used reasonable force in the lawful performance of their duties. We disagree and affirm the trial court's holding that defendants were entitled to governmental immunity.

In order to set forth a prima facie case of assault, a plaintiff is required to demonstrate an "'intentional unlawful offer of corporal injury to another person by force, or force unlawfully directed toward the person of another, under circumstances which create a well-founded apprehension of immediate contact, coupled with the apparent present ability to accomplish the contact.'" *VanVorous v Burmeister*, 262 Mich App 467, 482-483; 687 NW2d 132 (2004), quoting *Espinoza v Thomas*, 189 Mich App 110; 119; 472 NW2d 16 (1991). In order to prevail on a motion for summary disposition on a battery claim, a plaintiff must show a "wilful and harmful offensive touching of another person which results from an act intended to cause such a contact." *VanVorous*, 262 Mich App at 483 (further citations omitted). However, a police officer may use an amount of force reasonably necessary under the circumstances in order to effectuate an arrest. *Id.* at 480-481. If the amount of force used by the police officer was objectively reasonable under the circumstances, no assault and battery occurred. *Id*. at 483.

In *Odom v Wayne Co*, 482 Mich 459, 468, 480; 760 NW2d 217 (2008), the Supreme Court concluded that lower-level employees are entitled to qualified immunity from tort liability for intentional torts when the acts were undertaken during the course of employment and the employee acted or reasonably believed that he was acting in the scope of his authority, the acts were performed in good faith or without malice, and the acts were discretionary, not ministerial. The good faith element is subjective in nature, and it protects a defendant's honest belief and

---

[7] Plaintiff nonetheless contends that a factual issue is presented by the affidavit from the 911 caller. In this affidavit, the affiant indicates that criminal activity was not observed. However, the 911 transcript reveals that the caller reported criminal activity. The affidavit does not alter our conclusion because the relevant inquiry focuses upon the information available to police at the time of the contact. *People v Faucett*, 442 Mich 153, 167 n 18; 499 NW2d 764 (1993).

conduct taken in good faith with the cloak of immunity. *Id*. at 481-482. Additionally, the discretionary acts are those that require personal deliberation, resolution, and judgment. "Granting immunity to an employee engaged in discretionary acts allows the employee to resolve problems without constant fear of legal repercussions." *Id*. at 476.

In the present case, defendants were acting within the scope of their employment and responding to an emergency call at the time of the incident with plaintiffs. A police officer's determination regarding the type of action to take, whether an immediate arrest, the pursuit of a suspect, or the need to wait for backup assistance, constitute discretionary action entitled to immunity. *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 659-660; 363 NW2d 641 (1984). Therefore, these defendants were engaged in the performance of a discretionary act in the course of their employment when determining that an arrest was necessary in light of the emergency call, plaintiffs' description matching the report of perpetrators of vehicle vandalism, plaintiffs' attempted departure from the scene, and plaintiffs' failure to provide identification or show their hands.

Once the decision to arrest is made, it must be performed in a proper manner. *Ross*, 420 Mich at 660. For executing an arrest, "[a]n action may lie only if the officer utilized wanton or malicious conduct or demonstrated a reckless indifference to the common dictates of humanity." *Dickey v Fluhart*, 146 Mich App 268, 276; 380 NW2d 76 (1985). When addressing an action for assault and battery, discretion must be reposed in a law enforcement officer when making an arrest, the means necessary to apprehend the alleged offender, and to keep him secure after the apprehension. *Firestone v Rice*, 71 Mich 377, 384; 38 NW 885 (1888). Furthermore, "this discretion cannot be passed upon by a court or jury unless it has been abused through malice or wantonness or a reckless indifference to the common dictates of humanity." *Id*. Therefore, the trial court must address a preliminary question of law. Good faith means acting without malice. See *Armstrong v Ross Twp*, 82 Mich App 77, 85-86; 266 NW2d 674 (1978).

Application of governmental immunity is appropriate because defendants acted in good faith. When called upon to investigate a felony in progress, defendants found the individuals who matched the description of the perpetrators. Plaintiffs refused to exit their vehicle, refused to place their hands in the air, and were engaged in furtive gestures. A gun was found on the person of plaintiff Montgomery. Police officers are not required to take unnecessary risks in the performance of their duties. See *People v Otto*, 91 Mich App 444, 451; 284 NW2d 273 (1979). Because the officers acted in the scope of their authority, without malice, and the acts were discretionary, the trial court properly granted summary disposition based on qualified immunity. *Odom*, 482 Mich at 480.

Affirmed.

/s/ Kathleen Jansen
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood